

SENATE BILL 3028  
By McLeary

AN ACT to amend Tennessee Code Annotated, Title 45,  
Chapter 2, relative to the organization of banks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, Chapter 2, is amended by deleting Sections 45-2-201 through 45-2-205 in their entirety and by substituting instead the following:

**45-2-201.**

(a) A corporation seeking to conduct a banking business in Tennessee may be organized by five (5) or more incorporators, a majority of whom shall be residents of the state of Tennessee. The incorporators shall complete the process provided in this part and as outlined in subsection (c).

(b) Each incorporator shall subscribe and pay in full in cash for common stock in a minimum amount as determined by the commissioner.

(c) In order to provide for the organization of the business authorized to conduct banking business in Tennessee, applicants shall complete the following:

(1) Submit a notice of intention and request for issuance of a charter for a corporation seeking to conduct banking business in Tennessee to be filed with the secretary of state as provided in §45-2-202;

(2) Submit and complete an application for charter, as provided in §45-2-204; and

(3) Submit and complete an application for certificate of authority, as provided in §45-2-212.

(d) For purposes of this part, a bank may be organized as a corporation as provided in title 48, chapters 11 through 27 or as a limited liability company as provided in title 48, chapters 201 through 249 and as outlined in §45-2-220.

**45-2-202.**

(a) The incorporators shall file with the commissioner a notice of their intention to organize a corporation seeking authority to become a state bank, signed by each of the incorporators. The notice shall state the following and such other information as the commissioner may require:

(1) The name, residence and occupation of each incorporator, and the amount of stock subscribed and paid for by each;

(2) The name and address of an individual within the state to whom notice to all incorporators may be sent;

(3) The total capital, the number of shares of each class and series, the par value of the shares of each class and series of the corporation and a copy of the stockholder offering circular and subscription agreement. For purposes of Tennessee law, any securities with different voting, distribution, or liquidation rights or preferences shall be deemed to be securities of different classes;

(4) Whether it is intended that the proposed state bank shall have trust powers;

(5) The community in which the proposed state bank is to be headquartered;

(6) The proposed name of the institution which, in the commissioner's judgment, is not likely to cause confusion to the affected public. The incorporators shall use the phrase "in organization" after the proposed bank's name until such time as the certificate of authority has been issued;

(7) A statement of the method of financing and amount of organizational expense fund as required in §45-2-203;

(8) A copy of the escrow agreement; and

(9) The filing fee required by the secretary of state.

(b) The incorporators may also file with the commissioner a request for issuance of charter for a corporation seeking to conduct banking business in Tennessee, accompanied by an executed charter. The executed charter filed with the commissioner shall be in such form as the commissioner shall prescribe containing the following information:

(1) The name of the state bank;

(2) If the state bank is to exercise trust powers, a statement to that effect;

(3) The community in which the main office is to be located;

(4) The amount of capital, the number of shares of each class and series, the relative preferences, powers and rights of each class and series, the par value of the shares of each class and series, if any, and the amount of the paid-in surplus; and

(5) Such other proper provisions to govern the business and affairs of the state bank as may be desired by the incorporators, including, but not limited to, the initial directors of the proposed state bank.

(c)

(1) If the notice of intention, request for issuance of charter or any accompanying documents does not comply with the requirements of this section, the commissioner shall, within ten (10) business days after the receipt thereof, either:

(A) Notify the incorporators that the notice of intention, request for

issuance of charter and accompanying documents are approved as to form pending the receipt of any additional information requested of the applicant in the notice; or

(B) Notify the incorporators that the notice of intention, request for issuance of charter and accompanying documents, have not been accepted, calling attention to the defect or defects in such documents. The incorporators may resubmit the notice of intention, proposed charter or accompanying documents, revised as necessary, to address the defect or defects noted by the commissioner.

(2) The commissioner shall have five (5) business days after receipt of the revised notice of intention, request for issuance of charter and accompanying documents to review such and either:

(A) Notify the incorporators that such are approved as to form; or

(B) Notify the incorporators that the notice of intention, request for issuance of charter and accompanying documents have not been accepted, calling attention to the defect or defects still in such documents.

(3) If the revised notice of intention, request for issuance of charter and accompanying documents are not accepted, any subsequent filing by such incorporators for the proposed bank shall be as if it were an initial filing.

(4) If the commissioner does not refuse to accept the notice of intention and request for issuance of charter or revised notice of intention and revised request for issuance of charter within the time provided, they shall be deemed to be approved as to form.

(d) After the notice of intention and request for issuance of charter for a corporation seeking to conduct banking business in Tennessee is accepted for filing or deemed to

have been filed with the commissioner, the commissioner shall authorize the filing of the executed charter by endorsing such approval on all copies thereof and filing the originally executed charter with the secretary of state, retaining one (1) copy for the department's files and returning one (1) copy to the incorporators within ten (10) business days thereafter so that the incorporators may take such further steps necessary to duly incorporate the proposed new state bank as a corporate entity. However, the commissioner shall retain the right to require any amendment to the charter or disallow any proposed officer or director of the proposed new bank prior to granting a certificate of authority. Nothing in this subsection (d) shall prevent the commissioner from otherwise rejecting the application or refusing to grant a certificate of authority.

(e) It is a Class C misdemeanor, under this chapter and chapter 1 of this title, to accept any stock subscription for shares of capital stock of the proposed bank from any persons other than the incorporators until the incorporators have received the notification from the commissioner that the notice of intention and accompanying documents are approved as to form, or in violation of any order of the commissioner. Any subscription for capital stock of the proposed bank accepted in violation of this subsection (e) shall be enforceable by the commissioner and only to the extent the commissioner determines it to be necessary to protect investors.

**45-2-203.**

(a) Organizational expenses shall not be paid from capital or surplus funds of the bank without the prior written consent of the commissioner.

(b)

(1) Prior to filing the notice of intent, the incorporators shall subscribe for shares of the corporation seeking to conduct banking business in Tennessee in

an amount the commissioner deems adequate to pay the organizational expenses of the proposed bank.

(2) Such fund shall be used for expenses incurred by the incorporators in connection with the organization of the proposed bank. Subscriptions paid by the incorporators for their shares in the proposed bank may be used to pay organizational expenses but, in such case, shall not be commingled with funds in any account in which any non-incorporator funds have been or are to be deposited.

(c) Payment from such expense fund for payment of broker commissions to secure subscriptions to stock shall not be permitted without prior written consent of the commissioner.

**45-2-204.**

(a) After the incorporators have received notification from the commissioner that the notice of intention and other accompanying documents are approved as to form, the incorporators or, after the charter has been filed, the corporation seeking authority to conduct banking business in Tennessee, may file an application and request for charter, if not previously requested, with the commissioner. The incorporators shall submit the following, if not previously filed with the commissioner:

- (1) Such information as required by the commissioner in §45-2-202(b);
- (2) The application fee required by the commissioner;
- (3) Proposed bylaws in such form as the commissioner shall prescribe;

and

(4) An application in such form and containing such information as the commissioner requires, including the following:

(A) The name, residence and occupation of each subscriber from

whom subscriptions have been accepted as of the date the application is filed, and the number of shares for which each such subscriber has subscribed, which list shall be updated not less than every thirty (30) business days to add all additional subscribers and any amendments to any such information previously filed;

(B) The past and present connection with any bank, other than as a customer on terms generally available to the public, of each director and each subscriber to more than ten percent (10%) of the capital stock, updated as necessary to identify subscribers not previously identified in the application; and

(C) The address at which it is proposed that the state bank do business, or, if such address is not known, the area within the community in which it is proposed that the business be located.

(b)

(1) If the application, the proposed charter or any other accompanying documents do not comply with the requirements of chapters 1 and 2 of this title, the commissioner shall, within twenty (20) business days after the receipt thereof, either:

(A) Return them to the incorporators, calling attention to the defect or defects therein; or

(B) Notify the incorporators of the rejection of the application, calling attention to the defect or defects therein.

(2) If such application, proposed charter and accompanying documents, if any, are not so returned or rejected by the commissioner within twenty (20) business days of the receipt thereof, they shall be deemed to have been filed

with the commissioner.

(c) Should the application be rejected or should a certificate of authority not be granted, the commissioner shall give appropriate notice to the secretary of state. The incorporators shall either:

(1) Return the original charter to the commissioner and take such steps as are necessary to dissolve the proposed state bank as a corporate entity as provided in the Tennessee Business Corporation Act, compiled in title 48, chapters 11 - 27; provided, that all subscription proceeds, except those proceeds made by incorporators to establish an organizational expense fund as provided in §45-2-203, shall be returned to all subscribers in accordance with the subscription agreement; or

(2) Amend the original charter to rename the corporate entity and revise any other provisions as determined by the commissioner as provided in the Tennessee Business Corporation Act.

(d) The commissioner may also require publication of the notice.

(e) Notwithstanding the provisions in chapters 1 and 2 of this title to the contrary, the commissioner may prescribe by rule or regulation the application procedure for the formation of an interim bank to facilitate an interim bank merger, as defined in §45-2-1402.

SECTION 2. Tennessee Code Annotated, Title 45, Chapter 2, is amended by deleting Section 45-2-206 in its entirety and by substituting instead the following:

**45-2-206.**

After the charter for a corporation seeking to conduct banking business in Tennessee has been filed with the secretary of state, the incorporators or, if such have been initially appointed, the directors of the proposed state bank, may call for the

payment of the subscriptions. Such subscriptions shall be placed into an escrow account. The incorporators or directors, as appropriate, may not remove any funds from the escrow account prior to the issuance of certificate of authority or upon written approval from the commissioner.

SECTION 3. Tennessee Code Annotated, Title 45, Chapter 2, is amended by deleting Section 45-2-212 in its entirety and by substituting instead the following:

**45-2-212.**

After the applicant has received notification from the commissioner that the application for certificate of authority has been approved and subscription proceeds have been accepted and collected for at least the minimum capital of the proposed state bank as required by the commissioner, the proposed state bank shall file a request with the commissioner for the issuance of a certificate of authority, which request shall contain:

(1) A statement that the capital and surplus have been paid in;

(2) The name and address of each stockholder and the number of shares held by such stockholder; and

(3) Such other information as the commissioner may require to enable the commissioner to determine whether authority to commence business should be issued.

SECTION 4. Tennessee Code Annotated, Title 45, Chapter 2, Part 2, is amended by adding to as a new section the following:

**Section 45-2-220.**

(a) Subject to the requirements and restrictions of this chapter including, but not limited to, deposit insurance requirements where applicable, a bank or trust company may organize as a limited liability company pursuant to title 48, chapters 201 through 249.

(b) The department shall have the authority to promulgate rules and regulations specifying the conditions under which a bank or trust company may organize as a limited liability company.

(c) To the extent the provisions of title 48, chapters 201 through 249 are consistent with and not in conflict with the provisions of this chapter and the rules and regulations of the department, such provisions shall apply to a bank or trust company that has organized as a limited liability company.

SECTION 5. Tennessee Code Annotated, Title 45, Chapter 2, is amended by deleting Section 45-2-1703 in its entirety and by substituting instead the following:

**45-2-1703.**

(a) It is unlawful for any person to serve as an officer or director of a bank who:

(1) Has been convicted of an offense constituting in the jurisdiction in which the judgment was rendered, a felony involving a violation of banking laws, fraud, embezzlement, or breach of trust;

(2) Would be disqualified by federal law from serving as a director or officer of a federally chartered bank; or

(3) Is indebted to the bank for more than thirty (30) days upon judgment that has become final.

(b) Notwithstanding the provisions of subsection (a), the commissioner shall have the discretion to approve the application of any person to become a director or officer of a bank chartered under Tennessee law if the commissioner finds the person has demonstrated fitness to participate in the conduct of the affairs of the bank through evidence of such person's rehabilitation, including but not limited to, the person's reputation since the person's conviction, the person's age at the time of conviction, and the time which has elapsed since the conviction and such other factors as the

commissioner determines.

SECTION 6. This act shall apply to any notice of intention filed on or after the effective date of this act.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.